

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY MAY 26, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

No. 829

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**Introduced by Assembly Member Caballero**  
**(Coauthors: Assembly Members Coto, Fletcher, Galgiani, Jeffries,**  
**Lieu, Ma, and Portantino)**  
**(Coauthors: Senators Ashburn, Calderon, and Correa)**

February 26, 2009

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*An act to amend Sections 17276, 17276.9, 17276.10, 24416, 24416.9, 24416.10, and 25128.5 of, and to add Section 6377 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy. An act relating to taxation.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 829, as amended, Caballero. Sales and use tax: ~~personal and corporate income tax~~; *exemption: manufacturing equipment*.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, and provides various exemptions from the taxes imposed by that law.

~~This bill would exempt from a specified portion of those taxes, for calendar years beginning on or after January 1, 2013, and before January 1, 2020, the gross receipts from the sale of, and the storage, use, or other consumption of, sustainable development equipment investments of~~

~~tangible personal property purchased for use by a qualified person to be used in manufacturing or other processes, as specified, and tangible personal property purchased by a qualified person and used primarily during the research and development process for qualified research, as defined.~~

~~This bill would specify that this exemption does not apply to local sales and use taxes or transactions and use taxes.~~

~~Existing law allows individual and corporate taxpayers to utilize net operating losses and carryovers of those losses for purposes of offsetting their individual and corporate tax liabilities. Existing law allows net operating losses attributable to taxable years beginning on or after January 1, 2011, to be carrybacks to each of the preceding 2 taxable years.~~

~~This bill would delete those net operating loss carryback provisions.~~

~~The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. That law, for taxable years beginning on or after January 1, 2011, allows a taxpayer to make an irrevocable annual election to have that income apportioned in accordance with a single sales factor formula, except as provided.~~

~~This bill would require the election to be for 84 months.~~

~~This bill would take effect immediately as a tax levy.~~

*This bill would declare the intent of the Legislature to exempt from those taxes the sale of, and the storage, use, or other consumption of, manufacturing equipment used in the manufacturing process, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 *SECTION 1. It is the intent of the Legislature to enact*
- 2 *legislation that would exempt from specified state sales and use*

1 *taxes, the sale to, or use by, a manufacturer of tangible personal*  
2 *property purchased for use in manufacturing or otherwise*  
3 *processing property, or by a contractor performing a construction*  
4 *contract for the manufacturer, or by a person purchasing the*  
5 *property to use during the research and development process on*  
6 *qualified research.*

7 *It is further the intent of the Legislature that the exemption*  
8 *enacted by the Legislature will be accompanied by policies to*  
9 *provide offsetting revenues or cost savings to ensure this bill will*  
10 *not impose net new costs on the state.*

11 ~~SECTION 1. It is the intent of the Legislature to enact a~~  
12 ~~competitive tax policy for manufacturers by providing for partial~~  
13 ~~exemptions from state sales and use taxes for the sale of and the~~  
14 ~~storage, use, or other consumption of specified manufacturing~~  
15 ~~equipment and for sustainable manufacturing and research and~~  
16 ~~development equipment investments used in the manufacturing~~  
17 ~~process.~~

18 ~~SEC. 2. Section 6377 is added to the Revenue and Taxation~~  
19 ~~Code, to read:~~

20 ~~6377. On and after January 1, 2013, and before January 1,~~  
21 ~~2020, there are exempted from the taxes imposed by this part the~~  
22 ~~gross receipts from the sale of, and the storage, use, or other~~  
23 ~~consumption in this state of, all of the following:~~

24 ~~(1) Tangible personal property purchased by a qualified person~~  
25 ~~for use primarily in any stage of the manufacturing, processing,~~  
26 ~~refining, fabricating, or recycling of property, beginning at the~~  
27 ~~point any raw materials are received by the qualified person and~~  
28 ~~introduced into the process and ending at the point at which the~~  
29 ~~manufacturing, processing, refining, fabricating, or recycling has~~  
30 ~~altered property to its completed form, including packaging, if~~  
31 ~~required.~~

32 ~~(2) Tangible personal property purchased for use by a contractor~~  
33 ~~purchasing that property for use in the performance of a~~  
34 ~~construction contract for the qualified person who will use the~~  
35 ~~property as an integral part of the manufacturing, processing,~~  
36 ~~refining, fabricating, or recycling process, or as a storage facility~~  
37 ~~for use in connection with the manufacturing process.~~

38 ~~(3) Sustainable development equipment investments of tangible~~  
39 ~~personal property purchased by a qualified person for use primarily~~  
40 ~~in any stage of the manufacturing, processing, refining, fabricating,~~

1 or recycling of property beginning at the point any raw materials  
2 are received by the qualified person and introduced into the process  
3 and ending at the point at which the manufacturing, processing,  
4 refining, fabricating, or recycling has altered property to its  
5 completed form, including packaging, if required.

6 (4) ~~Tangible personal property purchased by a qualified person~~  
7 ~~for use primarily during the research and development process on~~  
8 ~~qualified research.~~

9 (b) ~~For purposes of this section:~~

10 (1) ~~“Fabricating” means to make, build, create, produce, or~~  
11 ~~assemble components or property to work in a new or different~~  
12 ~~manner.~~

13 (2) ~~“Manufacturing” means the activity of converting or~~  
14 ~~conditioning property by changing the form, composition, quality,~~  
15 ~~or character of the property for ultimate sale at retail or use in the~~  
16 ~~manufacturing of a product to be ultimately sold at retail.~~  
17 ~~Manufacturing includes any improvements to tangible personal~~  
18 ~~property that result in a greater service life or greater functionality~~  
19 ~~than that of the original property.~~

20 (3) ~~“Primarily” means tangible personal property used 50 percent~~  
21 ~~or more of the time in an activity described in subdivision (a).~~

22 (4) ~~“Process” means the period beginning at the point at which~~  
23 ~~any raw materials are received by the qualified taxpayer and~~  
24 ~~introduced into the manufacturing, processing, refining, fabricating,~~  
25 ~~or recycling activity of the qualified taxpayer and ending at the~~  
26 ~~point at which the manufacturing, processing, refining, fabricating,~~  
27 ~~or recycling activity of the qualified person has altered tangible~~  
28 ~~personal property to its completed form, including packaging, if~~  
29 ~~required. Raw materials shall be considered to have been~~  
30 ~~introduced into the process when the raw materials are stored on~~  
31 ~~the same premises where the qualified person’s manufacturing,~~  
32 ~~processing, refining, or recycling activity is conducted. Raw~~  
33 ~~materials that are stored on premises other than where the qualified~~  
34 ~~person’s manufacturing, processing, refining, fabricating, or~~  
35 ~~recycling activity is conducted, shall not be considered to have~~  
36 ~~been introduced into the manufacturing, processing, refining,~~  
37 ~~fabricating, or recycling process.~~

38 (5) ~~“Processing” means the physical application of the materials~~  
39 ~~and labor necessary to modify or change the characteristics of~~  
40 ~~property.~~

1     (6) “Qualified person” means either of the following:

2     (A) A person who is primarily engaged in those lines of business  
3 described in Codes 3111 to 3399, inclusive, or 5112 of the North  
4 American Industrial Classification System (NAICS) published by  
5 the United States Office of Management and Budget (OMB), 2002  
6 edition.

7     (B) An affiliate of a person described in subparagraph (A)  
8 provided that the affiliate is a member of the qualified person’s  
9 unitary group for which a combined report is required to be filed  
10 under Article 1 (commencing with Section 25101) of Chapter 17  
11 of Part 11.

12     (7) “Qualified research” means research that meets the  
13 requirements of Section 174 of the Internal Revenue Code.

14     (8) “Refining” means the process of converting a natural  
15 resource to an intermediate or finished product.

16     (9) “Sustainable development equipment” means qualified  
17 manufacturing or research and development equipment that meets  
18 any of the following:

19     (A) Is consistent with meeting the goals and objectives of  
20 compliance with greenhouse gas emissions standards as set forth  
21 in Division 25.5 (commencing with Section 38500) of the Health  
22 and Safety Code.

23     (B) Promotes the reduction of wasteful, inefficient, unnecessary,  
24 or uneconomic uses of energy.

25     (C) Encourages the utilization of cost-effective water use  
26 efficiency practices to curtail the waste of water and to ensure that  
27 water use does not exceed reasonable needs.

28     (D) Promotes the utilization of recycled or reusable materials  
29 in the manufacturing process.

30     (10) “Tangible personal property” includes, but is not limited  
31 to, all of the following:

32     (A) Machinery and equipment, including component parts and  
33 contrivances such as belts, shafts, moving parts, and operating  
34 structures.

35     (B) Equipment or devices used or required to operate, control,  
36 regulate, or maintain the machinery and equipment, including,  
37 without limitation, computers, data processing equipment, and  
38 computer software, together with all repair and replacement parts  
39 with a useful life of one or more years, whether purchased  
40 separately or in conjunction with a complete machine and

1 regardless of whether the machine or component parts are  
2 assembled by the qualified person or another party.

3 (C) Property used in pollution control that meets standards  
4 established by this state or any local or regional governmental  
5 agency within this state.

6 (D) Special purpose buildings and foundations used as an  
7 integral part of the manufacturing, processing, refining, or  
8 fabricating process, or that constitute a research or storage facility  
9 used during the manufacturing process.

10 (E) Fuels used or consumed in the manufacturing process.

11 (11) “Tangible personal property” does not include any of the  
12 following:

13 (A) Consumables with a normal useful life of less than one year,  
14 except as provided in subparagraph (E) of paragraph (10):

15 (B) Furniture, inventory, and equipment used in the extraction  
16 process, or equipment used to store finished products that have  
17 completed the manufacturing process.

18 (C) Buildings or components of buildings used solely for  
19 warehousing purposes after completion of the manufacturing  
20 process.

21 (D) Tangible personal property used primarily in administration,  
22 general management, or marketing.

23 (e) No exemption shall be allowed under this section unless the  
24 purchaser furnishes the retailer with an exemption certificate,  
25 completed in accordance with any instructions or regulations as  
26 the board may prescribe.

27 (d) Notwithstanding any provision of the Bradley-Burns  
28 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing  
29 with Section 7200)) or the Transactions and Use Tax Law (Part  
30 1.6 (commencing with Section 7251)), the exemption established  
31 by this section shall not apply with respect to any tax levied by a  
32 county, city, or district pursuant to, or in accordance with, either  
33 of those laws.

34 (e) (1) Notwithstanding subdivision (a), the exemption provided  
35 by this section shall not apply to any sale or use of property that,  
36 within one year from the date of purchase, is either removed from  
37 California, converted from an exempt use under subdivision (a)  
38 to some other use not qualifying for the exemption, or used in a  
39 manner not qualifying for the exemption.

1     ~~(2) Notwithstanding subdivision (a), the exemption established~~  
2 ~~by paragraphs (1) and (2) of subdivision (a) shall not apply with~~  
3 ~~respect to any tax levied pursuant to Sections 6051.2, 6051.5,~~  
4 ~~6051.7, 6201.2, 6201.5, or 6201.7 or pursuant to Section 35 of~~  
5 ~~Article XIII of the California Constitution.~~

6     ~~(3) Notwithstanding subdivision (a), the exemption established~~  
7 ~~by paragraphs (3) and (4) of subdivision (a) shall not apply with~~  
8 ~~respect to any tax levied pursuant to Section 6051.2, 6051.5,~~  
9 ~~6201.2, or 6201.5 or pursuant to Section 35 of Article XIII of the~~  
10 ~~California Constitution.~~

11     ~~(f) If a purchaser certifies in writing to the seller that the property~~  
12 ~~purchased without payment of the tax will be used in a manner~~  
13 ~~entitling the seller to regard the gross receipts from the sale as~~  
14 ~~exempt from the sales tax, and within one year from the date of~~  
15 ~~purchase, the purchaser (1) removes that property outside~~  
16 ~~California, (2) converts that property for use in a manner not~~  
17 ~~qualifying for the exemption, or (3) uses that property in a manner~~  
18 ~~not qualifying for the exemption, the purchaser shall be liable for~~  
19 ~~payment of sales tax, with applicable interest, as if the purchaser~~  
20 ~~were a retailer making a retail sale of the property at the time the~~  
21 ~~property is so removed, converted, or used, and the sales price of~~  
22 ~~the property to the purchaser shall be deemed the gross receipts~~  
23 ~~from that retail sale.~~

24     ~~SEC. 3. Section 17276 of the Revenue and Taxation Code is~~  
25 ~~amended to read:~~

26     ~~17276. Except as provided in Sections 17276.1, 17276.2,~~  
27 ~~17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided~~  
28 ~~by Section 172 of the Internal Revenue Code, relating to a net~~  
29 ~~operating loss deduction, shall be modified as follows:~~

30     ~~(a) (1) Net operating losses attributable to taxable years~~  
31 ~~beginning before January 1, 1987, shall not be allowed.~~

32     ~~(2) A net operating loss shall not be carried forward to any~~  
33 ~~taxable year beginning before January 1, 1987.~~

34     ~~(b) (1) Except as provided in paragraphs (2) and (3), the~~  
35 ~~provisions of Section 172(b)(2) of the Internal Revenue Code,~~  
36 ~~relating to the amount of carryovers, shall be modified so that the~~  
37 ~~applicable percentage of the entire amount of the net operating~~  
38 ~~loss for any taxable year shall be eligible for carryover to any~~  
39 ~~subsequent taxable year. For purposes of this subdivision, the~~  
40 ~~applicable percentage shall be:~~

1 (A) Fifty percent for any taxable year beginning before January  
2 1, 2000.

3 (B) Fifty-five percent for any taxable year beginning on or after  
4 January 1, 2000, and before January 1, 2002.

5 (C) Sixty percent for any taxable year beginning on or after  
6 January 1, 2002, and before January 1, 2004.

7 (D) One hundred percent for any taxable year beginning on or  
8 after January 1, 2004.

9 (2) In the case of a taxpayer who has a net operating loss in any  
10 taxable year beginning on or after January 1, 1994, and who  
11 operates a new business during that taxable year, each of the  
12 following shall apply to each loss incurred during the first three  
13 taxable years of operating the new business:

14 (A) If the net operating loss is equal to or less than the net loss  
15 from the new business, 100 percent of the net operating loss shall  
16 be carried forward as provided in subdivision (d).

17 (B) If the net operating loss is greater than the net loss from the  
18 new business, the net operating loss shall be carried over as  
19 follows:

20 (i) With respect to an amount equal to the net loss from the new  
21 business, 100 percent of that amount shall be carried forward as  
22 provided in subdivision (d).

23 (ii) With respect to the portion of the net operating loss that  
24 exceeds the net loss from the new business, the applicable  
25 percentage of that amount shall be carried forward as provided in  
26 subdivision (d).

27 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
28 Code, the amount described in clause (ii) of subparagraph (B) shall  
29 be absorbed before the amount described in clause (i) of  
30 subparagraph (B).

31 (3) In the case of a taxpayer who has a net operating loss in any  
32 taxable year beginning on or after January 1, 1994, and who  
33 operates an eligible small business during that taxable year, each  
34 of the following shall apply:

35 (A) If the net operating loss is equal to or less than the net loss  
36 from the eligible small business, 100 percent of the net operating  
37 loss shall be carried forward to the taxable years specified in  
38 subdivision (d).



1     ~~(B) If the net operating loss is greater than the net loss from the~~  
2     ~~eligible small business, the net operating loss shall be carried over~~  
3     ~~as follows:~~

4     ~~(i) With respect to an amount equal to the net loss from the~~  
5     ~~eligible small business, 100 percent of that amount shall be carried~~  
6     ~~forward as provided in subdivision (d).~~

7     ~~(ii) With respect to that portion of the net operating loss that~~  
8     ~~exceeds the net loss from the eligible small business, the applicable~~  
9     ~~percentage of that amount shall be carried forward as provided in~~  
10    ~~subdivision (d).~~

11    ~~(C) For purposes of Section 172(b)(2) of the Internal Revenue~~  
12    ~~Code, the amount described in clause (ii) of subparagraph (B) shall~~  
13    ~~be absorbed before the amount described in clause (i) of~~  
14    ~~subparagraph (B).~~

15    ~~(4) In the case of a taxpayer who has a net operating loss in a~~  
16    ~~taxable year beginning on or after January 1, 1994, and who~~  
17    ~~operates a business that qualifies as both a new business and an~~  
18    ~~eligible small business under this section, that business shall be~~  
19    ~~treated as a new business for the first three taxable years of the~~  
20    ~~new business.~~

21    ~~(5) In the case of a taxpayer who has a net operating loss in a~~  
22    ~~taxable year beginning on or after January 1, 1994, and who~~  
23    ~~operates more than one business, and more than one of those~~  
24    ~~businesses qualifies as either a new business or an eligible small~~  
25    ~~business under this section, paragraph (2) shall be applied first,~~  
26    ~~except that if there is any remaining portion of the net operating~~  
27    ~~loss after application of clause (i) of subparagraph (B) of that~~  
28    ~~paragraph, paragraph (3) shall be applied to the remaining portion~~  
29    ~~of the net operating loss as though that remaining portion of the~~  
30    ~~net operating loss constituted the entire net operating loss.~~

31    ~~(6) For purposes of this section, the term “net loss” means the~~  
32    ~~amount of net loss after application of Sections 465 and 469 of the~~  
33    ~~Internal Revenue Code.~~

34    ~~(e) Net operating loss carrybacks shall not be allowed.~~

35    ~~(d) (1) (A) For a net operating loss for any taxable year~~  
36    ~~beginning on or after January 1, 1987, and before January 1, 2000,~~  
37    ~~Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to~~  
38    ~~years to which net operating losses may be carried, is modified to~~  
39    ~~substitute “five taxable years” in lieu of “20 taxable years” except~~  
40    ~~as otherwise provided in paragraphs (2) and (3).~~

1     ~~(B) For a net operating loss for any taxable year beginning on~~  
2     ~~or after January 1, 2000, and before January 1, 2008, Section~~  
3     ~~172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years~~  
4     ~~to which net operating losses may be carried, is modified to~~  
5     ~~substitute “10 taxable years” in lieu of “20 taxable years.”~~

6     ~~(2) For any taxable year beginning before January 1, 2000, in~~  
7     ~~the case of a “new business,” the “five taxable years” in paragraph~~  
8     ~~(1) shall be modified to read as follows:~~

9     ~~(A) “Eight taxable years” for a net operating loss attributable~~  
10    ~~to the first taxable year of that new business.~~

11    ~~(B) “Seven taxable years” for a net operating loss attributable~~  
12    ~~to the second taxable year of that new business.~~

13    ~~(C) “Six taxable years” for a net operating loss attributable to~~  
14    ~~the third taxable year of that new business.~~

15    ~~(3) For any carryover of a net operating loss for which a~~  
16    ~~deduction is denied by Section 17276.3, the carryover period~~  
17    ~~specified in this subdivision shall be extended as follows:~~

18    ~~(A) By one year for a net operating loss attributable to taxable~~  
19    ~~years beginning in 1991.~~

20    ~~(B) By two years for a net operating loss attributable to taxable~~  
21    ~~years beginning prior to January 1, 1991.~~

22    ~~(4) The net operating loss attributable to taxable years beginning~~  
23    ~~on or after January 1, 1987, and before January 1, 1994, shall be~~  
24    ~~a net operating loss carryover to each of the 10 taxable years~~  
25    ~~following the year of the loss if it is incurred by a taxpayer that is~~  
26    ~~under the jurisdiction of the court in a Title 11 or similar case at~~  
27    ~~any time during the income year. The loss carryover provided in~~  
28    ~~the preceding sentence shall not apply to any loss incurred after~~  
29    ~~the date the taxpayer is no longer under the jurisdiction of the court~~  
30    ~~in a Title 11 or similar case.~~

31    ~~(e) For purposes of this section:~~

32    ~~(1) “Eligible small business” means any trade or business that~~  
33    ~~has gross receipts, less returns and allowances, of less than one~~  
34    ~~million dollars (\$1,000,000) during the taxable year.~~

35    ~~(2) Except as provided in subdivision (f), “new business” means~~  
36    ~~any trade or business activity that is first commenced in this state~~  
37    ~~on or after January 1, 1994.~~

38    ~~(3) “Title 11 or similar case” shall have the same meaning as~~  
39    ~~in Section 368(a)(3) of the Internal Revenue Code.~~

1     ~~(4) In the case of any trade or business activity conducted by a~~  
2     ~~partnership or “S” corporation paragraphs (1) and (2) shall be~~  
3     ~~applied to the partnership or “S” corporation.~~

4     ~~(f) For purposes of this section, in determining whether a trade~~  
5     ~~or business activity qualifies as a new business under paragraph~~  
6     ~~(2) of subdivision (e), the following rules shall apply:~~

7     ~~(1) In any case where a taxpayer purchases or otherwise acquires~~  
8     ~~all or any portion of the assets of an existing trade or business~~  
9     ~~(irrespective of the form of entity) that is doing business in this~~  
10    ~~state (within the meaning of Section 23101), the trade or business~~  
11    ~~thereafter conducted by the taxpayer (or any related person) shall~~  
12    ~~not be treated as a new business if the aggregate fair market value~~  
13    ~~of the acquired assets (including real, personal, tangible, and~~  
14    ~~intangible property) used by the taxpayer (or any related person)~~  
15    ~~in the conduct of its trade or business exceeds 20 percent of the~~  
16    ~~aggregate fair market value of the total assets of the trade or~~  
17    ~~business being conducted by the taxpayer (or any related person).~~  
18    ~~For purposes of this paragraph only, the following rules shall apply:~~

19    ~~(A) The determination of the relative fair market values of the~~  
20    ~~acquired assets and the total assets shall be made as of the last day~~  
21    ~~of the first taxable year in which the taxpayer (or any related~~  
22    ~~person) first uses any of the acquired trade or business assets in~~  
23    ~~its business activity.~~

24    ~~(B) Any acquired assets that constituted property described in~~  
25    ~~Section 1221(1) of the Internal Revenue Code in the hands of the~~  
26    ~~transferor shall not be treated as assets acquired from an existing~~  
27    ~~trade or business, unless those assets also constitute property~~  
28    ~~described in Section 1221(1) of the Internal Revenue Code in the~~  
29    ~~hands of the acquiring taxpayer (or related person).~~

30    ~~(2) In any case where a taxpayer (or any related person) is~~  
31    ~~engaged in one or more trade or business activities in this state, or~~  
32    ~~has been engaged in one or more trade or business activities in this~~  
33    ~~state within the preceding 36 months (“prior trade or business~~  
34    ~~activity”), and thereafter commences an additional trade or business~~  
35    ~~activity in this state, the additional trade or business activity shall~~  
36    ~~only be treated as a new business if the additional trade or business~~  
37    ~~activity is classified under a different division of the Standard~~  
38    ~~Industrial Classification (SIC) Manual published by the United~~  
39    ~~States Office of Management and Budget, 1987 edition, than are~~

1 any of the taxpayer's (or any related person's) current or prior  
2 trade or business activities.

3 (3) In any case where a taxpayer, including all related persons,  
4 is engaged in trade or business activities wholly outside of this  
5 state and the taxpayer first commences doing business in this state  
6 (within the meaning of Section 23101) after December 31, 1993  
7 (other than by purchase or other acquisition described in paragraph  
8 (1)), the trade or business activity shall be treated as a new business  
9 under paragraph (2) of subdivision (c).

10 (4) In any case where the legal form under which a trade or  
11 business activity is being conducted is changed, the change in form  
12 shall be disregarded and the determination of whether the trade or  
13 business activity is a new business shall be made by treating the  
14 taxpayer as having purchased or otherwise acquired all or any  
15 portion of the assets of an existing trade or business under the rules  
16 of paragraph (1) of this subdivision.

17 (5) "Related person" shall mean any person that is related to  
18 the taxpayer under either Section 267 or 318 of the Internal  
19 Revenue Code.

20 (6) "Acquire" shall include any gift, inheritance, transfer incident  
21 to divorce, or any other transfer, whether or not for consideration.

22 (7) (A) For taxable years beginning on or after January 1, 1997,  
23 the term "new business" shall include any taxpayer that is engaged  
24 in biopharmaceutical activities or other biotechnology activities  
25 that are described in Codes 2833 to 2836, inclusive, of the Standard  
26 Industrial Classification (SIC) Manual published by the United  
27 States Office of Management and Budget, 1987 edition, and as  
28 further amended, and that has not received regulatory approval for  
29 any product from the United States Food and Drug Administration.

30 (B) For purposes of this paragraph:

31 (i) "Biopharmaceutical activities" means those activities that  
32 use organisms or materials derived from organisms, and their  
33 cellular, subcellular, or molecular components, in order to provide  
34 pharmaceutical products for human or animal therapeutics and  
35 diagnostics. Biopharmaceutical activities make use of living  
36 organisms to make commercial products, as opposed to  
37 pharmaceutical activities that make use of chemical compounds  
38 to produce commercial products.

39 (ii) "Other biotechnology activities" means activities consisting  
40 of the application of recombinant DNA technology to produce

1 commercial products, as well as activities regarding pharmaceutical  
2 delivery systems designed to provide a measure of control over  
3 the rate, duration, and site of pharmaceutical delivery.

4 (g) ~~In computing the modifications under Section 172(d)(2) of~~  
5 ~~the Internal Revenue Code, relating to capital gains and losses of~~  
6 ~~taxpayers other than corporations, the exclusion provided by~~  
7 ~~Section 18152.5 shall not be allowed.~~

8 (h) ~~Notwithstanding any provisions of this section to the~~  
9 ~~contrary, a deduction shall be allowed to a “qualified taxpayer” as~~  
10 ~~provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6,~~  
11 ~~and 17276.7.~~

12 (i) ~~The Franchise Tax Board may prescribe appropriate~~  
13 ~~regulations to carry out the purposes of this section, including any~~  
14 ~~regulations necessary to prevent the avoidance of the purposes of~~  
15 ~~this section through splitups, shell corporations, partnerships, tiered~~  
16 ~~ownership structures, or otherwise.~~

17 (j) ~~The Franchise Tax Board may reclassify any net operating~~  
18 ~~loss carryover determined under either paragraph (2) or (3) of~~  
19 ~~subdivision (b) as a net operating loss carryover under paragraph~~  
20 ~~(1) of subdivision (b) upon a showing that the reclassification is~~  
21 ~~necessary to prevent evasion of the purposes of this section.~~

22 (k) ~~Except as otherwise provided, the amendments made by~~  
23 ~~Chapter 107 of the Statutes of 2000 shall apply to net operating~~  
24 ~~losses for taxable years beginning on or after January 1, 2000.~~

25 ~~SEC. 4. Section 17276.9 of the Revenue and Taxation Code~~  
26 ~~is amended to read:~~

27 ~~17276.9. (a) Notwithstanding Sections 17276, 17276.1,~~  
28 ~~17276.2, 17276.4, 17276.5, 17276.6, and 17276.7 of this code and~~  
29 ~~Section 172 of the Internal Revenue Code, no net operating loss~~  
30 ~~deduction shall be allowed for any taxable year beginning on or~~  
31 ~~after January 1, 2008, and before January 1, 2010.~~

32 (b) ~~For any net operating loss or carryover of a net operating~~  
33 ~~loss for which a deduction is denied by subdivision (a), the~~  
34 ~~carryover period under Section 172 of the Internal Revenue Code~~  
35 ~~shall be extended as follows:~~

36 (1) ~~By one year, for losses incurred in taxable years beginning~~  
37 ~~on or after January 1, 2008, and before January 1, 2009.~~

38 (2) ~~By two years, for losses incurred in taxable years beginning~~  
39 ~~before January 1, 2008.~~

~~(e) The provisions of this section shall not apply to a taxpayer with net business income of less than five hundred thousand dollars (\$500,000) for the taxable year. For purposes of this subdivision, business income means:~~

~~(1) Income from a trade or business, whether conducted by the taxpayer or by a passthrough entity owned directly or indirectly by the taxpayer. For purposes of this paragraph, the term “passthrough entity” means a partnership or an “S” corporation.~~

~~(2) Income from rental activity.~~

~~(3) Income attributable to a farming business.~~

~~SEC. 5. Section 17276.10 of the Revenue and Taxation Code is amended to read:~~

~~17276.10. Notwithstanding Section 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss attributable to a taxable year beginning on or after January 1, 2008, shall be a net operating carryover to each of the 20 taxable years following the year of the loss.~~

~~SEC. 6. Section 24416 of the Revenue and Taxation Code is amended to read:~~

~~24416. Except as provided in Sections 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with Section 172 of the Internal Revenue Code, except as otherwise provided.~~

~~(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.~~

~~(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.~~

~~(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:~~

~~(A) Fifty percent for any taxable year beginning before January 1, 2000.~~

~~(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.~~

1     ~~(C) Sixty percent for any taxable year beginning on or after~~  
2     ~~January 1, 2002, and before January 1, 2004.~~

3     ~~(D) One hundred percent for any taxable year beginning on or~~  
4     ~~after January 1, 2004.~~

5     ~~(2) In the case of a taxpayer who has a net operating loss in any~~  
6     ~~taxable year beginning on or after January 1, 1994, and who~~  
7     ~~operates a new business during that taxable year, each of the~~  
8     ~~following shall apply to each loss incurred during the first three~~  
9     ~~taxable years of operating the new business:~~

10    ~~(A) If the net operating loss is equal to or less than the net loss~~  
11    ~~from the new business, 100 percent of the net operating loss shall~~  
12    ~~be carried forward as provided in subdivision (e).~~

13    ~~(B) If the net operating loss is greater than the net loss from the~~  
14    ~~new business, the net operating loss shall be carried over as~~  
15    ~~follows:~~

16    ~~(i) With respect to an amount equal to the net loss from the new~~  
17    ~~business, 100 percent of that amount shall be carried forward as~~  
18    ~~provided in subdivision (e).~~

19    ~~(ii) With respect to the portion of the net operating loss that~~  
20    ~~exceeds the net loss from the new business, the applicable~~  
21    ~~percentage of that amount shall be carried forward as provided in~~  
22    ~~subdivision (d).~~

23    ~~(C) For purposes of Section 172(b)(2) of the Internal Revenue~~  
24    ~~Code, the amount described in clause (ii) of subparagraph (B) shall~~  
25    ~~be absorbed before the amount described in clause (i) of~~  
26    ~~subparagraph (B).~~

27    ~~(3) In the case of a taxpayer who has a net operating loss in any~~  
28    ~~taxable year beginning on or after January 1, 1994, and who~~  
29    ~~operates an eligible small business during that taxable year, each~~  
30    ~~of the following shall apply:~~

31    ~~(A) If the net operating loss is equal to or less than the net loss~~  
32    ~~from the eligible small business, 100 percent of the net operating~~  
33    ~~loss shall be carried forward to the taxable years specified in~~  
34    ~~paragraph (1) of subdivision (e).~~

35    ~~(B) If the net operating loss is greater than the net loss from the~~  
36    ~~eligible small business, the net operating loss shall be carried over~~  
37    ~~as follows:~~

38    ~~(i) With respect to an amount equal to the net loss from the~~  
39    ~~eligible small business, 100 percent of that amount shall be carried~~  
40    ~~forward as provided in subdivision (e).~~

~~(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (e).~~

~~(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).~~

~~(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.~~

~~(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of paragraph (2), paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.~~

~~(6) For purposes of this section, "net loss" means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.~~

~~(e) For any taxable year in which the taxpayer has in effect a water's-edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated corporation in a combined report whose income and apportionment factors would not have been taken into account if a water's-edge election under Section 25110 had been in effect for the taxable year in which the loss was incurred.~~

~~(d) Net operating loss carrybacks shall not be allowed.~~

~~(e) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to~~



1 years to which net operating losses may be carried, is modified to  
2 substitute “five taxable years” in lieu of “20 years” except as  
3 otherwise provided in paragraphs (2), (3), and (4).

4 (B) For a net operating loss for any income year beginning on  
5 or after January 1, 2000, and before January 1, 2008, Section  
6 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years  
7 to which net operating losses may be carried, is modified to  
8 substitute “10 taxable years” in lieu of “20 taxable years.”

9 (2) For any income year beginning before January 1, 2000, in  
10 the case of a “new business,” the “five taxable years” referred to  
11 in paragraph (1) shall be modified to read as follows:

12 (A) “Eight taxable years” for a net operating loss attributable  
13 to the first taxable year of that new business.

14 (B) “Seven taxable years” for a net operating loss attributable  
15 to the second taxable year of that new business.

16 (C) “Six taxable years” for a net operating loss attributable to  
17 the third taxable year of that new business.

18 (3) For any carryover of a net operating loss for which a  
19 deduction is denied by Section 24416.3, the carryover period  
20 specified in this subdivision shall be extended as follows:

21 (A) By one year for a net operating loss attributable to taxable  
22 years beginning in 1991.

23 (B) By two years for a net operating loss attributable to taxable  
24 years beginning prior to January 1, 1991.

25 (4) The net operating loss attributable to taxable years beginning  
26 on or after January 1, 1987, and before January 1, 1994, shall be  
27 a net operating loss carryover to each of the 10 taxable years  
28 following the year of the loss if it is incurred by a corporation that  
29 was either of the following:

30 (A) Under the jurisdiction of the court in a Title 11 or similar  
31 case at any time prior to January 1, 1994. The loss carryover  
32 provided in the preceding sentence shall not apply to any loss  
33 incurred in an income year after the taxable year during which the  
34 corporation is no longer under the jurisdiction of the court in a  
35 Title 11 or similar case.

36 (B) In receipt of assets acquired in a transaction that qualifies  
37 as a tax-free reorganization under Section 368(a)(1)(G) of the  
38 Internal Revenue Code.

39 (f) For purposes of this section:

1     ~~(1) “Eligible small business” means any trade or business that~~  
2     ~~has gross receipts, less returns and allowances, of less than one~~  
3     ~~million dollars (\$1,000,000) during the income year.~~

4     ~~(2) Except as provided in subdivision (g), “new business” means~~  
5     ~~any trade or business activity that is first commenced in this state~~  
6     ~~on or after January 1, 1994.~~

7     ~~(3) “Title 11 or similar case” shall have the same meaning as~~  
8     ~~in Section 368(a)(3) of the Internal Revenue Code.~~

9     ~~(4) In the case of any trade or business activity conducted by a~~  
10    ~~partnership or an “S corporation,” paragraphs (1) and (2) shall be~~  
11    ~~applied to the partnership or “S corporation.”~~

12    ~~(g) For purposes of this section, in determining whether a trade~~  
13    ~~or business activity qualifies as a new business under paragraph~~  
14    ~~(2) of subdivision (e), the following rules shall apply:~~

15    ~~(1) In any case where a taxpayer purchases or otherwise acquires~~  
16    ~~all or any portion of the assets of an existing trade or business~~  
17    ~~(irrespective of the form of entity) that is doing business in this~~  
18    ~~state (within the meaning of Section 23101), the trade or business~~  
19    ~~thereafter conducted by the taxpayer (or any related person) shall~~  
20    ~~not be treated as a new business if the aggregate fair market value~~  
21    ~~of the acquired assets (including real, personal, tangible, and~~  
22    ~~intangible property) used by the taxpayer (or any related person)~~  
23    ~~in the conduct of its trade or business exceeds 20 percent of the~~  
24    ~~aggregate fair market value of the total assets of the trade or~~  
25    ~~business being conducted by the taxpayer (or any related person).~~  
26    ~~For purposes of this paragraph only, the following rules shall apply:~~

27    ~~(A) The determination of the relative fair market values of the~~  
28    ~~acquired assets and the total assets shall be made as of the last day~~  
29    ~~of the first taxable year in which the taxpayer (or any related~~  
30    ~~person) first uses any of the acquired trade or business assets in~~  
31    ~~its business activity.~~

32    ~~(B) Any acquired assets that constituted property described in~~  
33    ~~Section 1221(1) of the Internal Revenue Code in the hands of the~~  
34    ~~transferor shall not be treated as assets acquired from an existing~~  
35    ~~trade or business, unless those assets also constitute property~~  
36    ~~described in Section 1221(1) of the Internal Revenue Code in the~~  
37    ~~hands of the acquiring taxpayer (or related person).~~

38    ~~(2) In any case where a taxpayer (or any related person) is~~  
39    ~~engaged in one or more trade or business activities in this state, or~~  
40    ~~has been engaged in one or more trade or business activities in this~~

1 state within the preceding 36 months (“prior trade or business  
2 activity”), and thereafter commences an additional trade or business  
3 activity in this state, the additional trade or business activity shall  
4 only be treated as a new business if the additional trade or business  
5 activity is classified under a different division of the Standard  
6 Industrial Classification (SIC) Manual published by the United  
7 States Office of Management and Budget, 1987 edition, than are  
8 any of the taxpayer’s (or any related person’s) current or prior  
9 trade or business activities.

10 (3) In any case where a taxpayer, including all related persons,  
11 is engaged in trade or business activities wholly outside of this  
12 state and the taxpayer first commences doing business in this state  
13 (within the meaning of Section 23101) after December 31, 1993  
14 (other than by purchase or other acquisition described in paragraph  
15 (1)), the trade or business activity shall be treated as a new business  
16 under paragraph (2) of subdivision (e).

17 (4) In any case where the legal form under which a trade or  
18 business activity is being conducted is changed, the change in form  
19 shall be disregarded and the determination of whether the trade or  
20 business activity is a new business shall be made by treating the  
21 taxpayer as having purchased or otherwise acquired all or any  
22 portion of the assets of an existing trade or business under the rules  
23 of paragraph (1) of this subdivision.

24 (5) “Related person” shall mean any person that is related to  
25 the taxpayer under either Section 267 or 318 of the Internal  
26 Revenue Code.

27 (6) “Acquire” shall include any transfer, whether or not for  
28 consideration.

29 (7) (A) For taxable years beginning on or after January 1, 1997,  
30 the term “new business” shall include any taxpayer that is engaged  
31 in biopharmaceutical activities or other biotechnology activities  
32 that are described in Codes 2833 to 2836, inclusive, of the Standard  
33 Industrial Classification (SIC) Manual published by the United  
34 States Office of Management and Budget, 1987 edition, and as  
35 further amended, and that has not received regulatory approval for  
36 any product from the United States Food and Drug Administration.

37 (B) For purposes of this paragraph:

38 (i) “Biopharmaceutical activities” means those activities that  
39 use organisms or materials derived from organisms, and their  
40 cellular, subcellular, or molecular components, in order to provide

1 pharmaceutical products for human or animal therapeutics and  
2 diagnostics. Biopharmaceutical activities make use of living  
3 organisms to make commercial products, as opposed to  
4 pharmaceutical activities that make use of chemical compounds  
5 to produce commercial products.

6 (ii) “Other biotechnology activities” means activities consisting  
7 of the application of recombinant DNA technology to produce  
8 commercial products, as well as activities regarding pharmaceutical  
9 delivery systems designed to provide a measure of control over  
10 the rate, duration, and site of pharmaceutical delivery.

11 (h) For purposes of corporations whose net income is determined  
12 under Chapter 17 (commencing with Section 25101), Section  
13 25108 shall apply to each of the following:

14 (1) The amount of net operating loss incurred in any taxable  
15 year that may be carried forward to another taxable year.

16 (2) The amount of any loss carry forward that may be deducted  
17 in any taxable year.

18 (i) The provisions of Section 172(b)(1)(D) of the Internal  
19 Revenue Code, relating to bad debt losses of commercial banks,  
20 shall not be applicable.

21 (j) The Franchise Tax Board may prescribe appropriate  
22 regulations to carry out the purposes of this section, including any  
23 regulations necessary to prevent the avoidance of the purposes of  
24 this section through splitups, shell corporations, partnerships, tiered  
25 ownership structures, or otherwise.

26 (k) The Franchise Tax Board may reclassify any net operating  
27 loss carryover determined under either paragraph (2) or (3) of  
28 subdivision (b) as a net operating loss carryover under paragraph  
29 (1) of subdivision (b) upon a showing that the reclassification is  
30 necessary to prevent evasion of the purposes of this section.

31 (l) Except as otherwise provided, the amendments made by  
32 Chapter 107 of the Statutes of 2000 shall apply to net operating  
33 losses for taxable years beginning on or after January 1, 2000.

34 SEC. 7. Section 24416.9 of the Revenue and Taxation Code  
35 is amended to read:

36 24416.9. (a) Notwithstanding Sections 24416, 24416.1,  
37 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7 of this code and  
38 Section 172 of the Internal Revenue Code, no net operating loss  
39 deduction shall be allowed for any taxable year beginning on or  
40 after January 1, 2008, and before January 1, 2010.

1     ~~(b) For any net operating loss or carryover of a net operating~~  
2 ~~loss for which a deduction is denied by subdivision (a), the~~  
3 ~~carryover period under Section 172 of the Internal Revenue Code~~  
4 ~~shall be extended as follows:~~

5     ~~(1) By one year, for losses incurred in taxable years beginning~~  
6 ~~on or after January 1, 2008, and before January 1, 2009.~~

7     ~~(2) By two years, for losses incurred in taxable years beginning~~  
8 ~~before January 1, 2008.~~

9     ~~(c) The provisions of this section shall not apply to a taxpayer~~  
10 ~~with income subject to tax under this part of less than five hundred~~  
11 ~~thousand dollars (\$500,000) for the taxable year.~~

12     ~~SEC. 8. Section 24416.10 of the Revenue and Taxation Code~~  
13 ~~is amended to read:~~

14     ~~24416.10. Notwithstanding Section 24416.1, 24416.2, 24416.4,~~  
15 ~~24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss~~  
16 ~~attributable to a taxable year beginning on or after January 1, 2008,~~  
17 ~~shall be a net operating carryover to each of the 20 taxable years~~  
18 ~~following the year of the loss.~~

19     ~~SEC. 9. Section 25128.5 of the Revenue and Taxation Code,~~  
20 ~~as added by Section 11 of Chapter 10 of the 3rd Extraordinary~~  
21 ~~Session of the Statutes of 2009, is amended to read:~~

22     ~~25128.5. (a) Notwithstanding Section 38006, any apportioning~~  
23 ~~trade or business, other than an apportioning trade or business~~  
24 ~~described in subdivision (b) of Section 25128, may make an~~  
25 ~~irrevocable election on an original timely filed return, in the manner~~  
26 ~~and form prescribed by the Franchise Tax Board to apportion its~~  
27 ~~income in accordance with this section, and not in accordance with~~  
28 ~~Section 25128. Each contract making an election shall be binding~~  
29 ~~for a period of 84 months.~~

30     ~~(b) Notwithstanding Section 38006, for taxable years beginning~~  
31 ~~on or after January 1, 2011, all business income shall be~~  
32 ~~apportioned to this state by multiplying the business income by~~  
33 ~~the sales factor.~~

34     ~~(c) The Franchise Tax Board is authorized to issue regulations~~  
35 ~~necessary or appropriate regarding the making of an election under~~  
36 ~~this section, including regulations that are consistent with rules~~  
37 ~~prescribed for making an election under Section 25113.~~

1     ~~SEC. 10. This act provides for a tax levy within the meaning~~  
2     ~~of Article IV of the Constitution and shall go into immediate effect.~~

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